



By Daniel J. Canon

The Right to Enjoy Work

Is it possible that there is a fundamental human right not just to work, but to enjoy work? If there is no such right, should there be?

For many of you, that proposition probably borders on absurd. After all, they call it “work” for a reason, right? You’re not supposed to enjoy it. You’re supposed to work hard, put food on the table, and yearn for the freedom of the weekend. Working people as far back as Aristotle have generally agreed, “no one could be both free and obliged to earn a living.”¹

To clarify, I don’t really mean “enjoy” in the way that you’d enjoy a vacation or a frosty adult beverage. I mean “enjoy” as in “not being miserable all the time.” Still not sold? Just humor me for a couple of pages.

Let’s start with the proposition that rights are not necessarily inherent, fixed, universal or timeless. To the contrary, almost everything we take for granted as a “right,” whether considered a civil right or a human right, is likely to be a recent development in human history. Such rights often begin as popular ideas and are eventually formally recognized by a judiciary, a legislature or some other governing body. For example, the Fourth Amendment’s guarantee against unreasonable searches and seizures had little meaning until the 1960s.² As of 2005, we may now properly say that American juveniles have a constitutional right not to be put to death for even the most unspeakable crimes.³ The United Nations did not formally declare water and sanitation as human rights until 2010.⁴ Everyone reading this likely remembers a time when the idea of same-sex marriage as a right was totally unheard of.⁵ Even Internet access has been unanimously backed by a 47-nation council of the U.N. as a basic human right.⁶ Rights are fluid. Rights are transient. Rights are adaptable.

What rights should employees have? For most of America’s history, workplaces have been mini-monarchies. The boss can do no wrong. There is no right not to be miserable under this regime. And for the longest time, employees basically had no rights at all. You did what the boss said. If it’s clean toilets, you cleaned toilets. If it’s sleep with him,

you slept with him. If it’s work 15-hour days until you drop dead, that’s what you did.⁷ If it’s getting called a racial slur every day, you’d have to suck it up. The old employment lawyer’s maxim goes: “You can be fired for any reason, or no reason at all.”

At some point, this maxim was tweaked slightly to include “You can’t be fired for a *wrong* reason.” Title VII came along.⁸ The racial slurs and quid pro quo arrangements were no more (on paper at least). This did not come about until 1964, almost a century after the Fourteenth Amendment guaranteed equal protection of the laws to all, and forty-four years after women got the right to vote. Twenty-six years after Title VII, the Americans with Disabilities Act formally codified the rights of the disabled.⁹ Equality in the workplace for the disabled, for women, and for minorities is something we Americans take for granted now. It is difficult for a plaintiff’s lawyer to imagine that this is a bad thing. It’s what we work for every day. You don’t just work for a paycheck, right?

There is a dreamy altruism buried deep within the miserly spirit of capitalism. It is an often unspoken ethos that suggests people should not just have the right to live, but to live *better*, as long as they’re willing to work for it. No self-respecting entrepreneur would argue that capitalism is the best system out there simply because it allows for mere survival. It is the best because it allows you to thrive. To live well. To have your cake and eat it too.

With this principle in mind, the mere recognition that such rights are possessed by not just entrepreneurs, but *employees*, is profoundly important. As soon as it is acknowledged that the worker has an interest in capitalism beyond just staying alive and funneling money into the employer’s pockets, you then have to ask where those rights end. And is it so difficult to imagine that one might have not just a desire but a *right* not to be miserable at work? At a place where you might spend the vast majority of your waking hours?

An argument could be made that such a right was envisioned by our founding fathers, and even before. Indeed, the idea of general contentment as a right is very old. You poli-sci majors know what I mean. More than 200 years ago, the Second Continental Congress adopted the Declaration of Independence, proclaiming “the pursuit of Happiness” to be “an inalienable Right” of the people. Fringe radicals like Jean-Jacques Rousseau and Benjamin Franklin espoused the notion that “one’s working life could be at the center of any desire for happiness.”¹⁰ Closer to home, the Kentucky Constitution lists the “right to enjoy life” as “inherent and inalienable.”¹¹ I am not aware of any case that has mentioned this provision in the last 120 years, even in passing. But hey, it was almost two hundred

years between the adoption of the Fourth Amendment and the Supreme Court’s series of watershed decisions on unreasonable searches. Rights are adaptable. Anything can happen. Anyway, the point is: no one would say you have the right to pursue happiness, but not actually be happy. And no one would say you have the right to enjoy life, but not to enjoy work, where many of us spend most of our lives.

But whether or not you buy the historical argument, it is practically undeniable that a de facto right to enjoy work is now rattling the bars of its centuries-old cage, demanding formal recognition. All relevant evidence indicates that the days of “sucking it up,” punching a time card for thirty years come hell or high water, and collecting a pension

are drawing to a close. And not just because no one’s handing out pensions.¹² Generation Y, or “millennials” have uncorked the proverbial bottle, and the genie isn’t likely to go back in without a fight. In fact, the vast majority of corporate America’s new recruits believe they deserve their “dream job.”¹³ In recent years, one of the most popular classes at Harvard has been Tal Ben-Shahar’s Positive Psychology seminar, which teaches students research-based ways to live a more satisfying life.¹⁴ In other words, it’s a happiness class. Popular books like “The No Asshole Rule” and “The 4-Hour Workweek” illustrate the reluctance of the emerging workforce to tolerate oppressive or even mildly unpleasant work environments.

What does all this have to do with the legal profession? Virtually every legal blog has covered the topic of how

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to bring a law office into the future. Sure, you should be scanning your documents, you should have cloud storage, you should have social media strategies in place, etc. But for all the technology talk, there is comparatively little discussion of how to bring the *attitude* of the legal workplace into the 21st century. Everyone reading this likely knows more than a few horror stories about lawyers, paralegals, assistants, runners or others in the industry who have been subjected to sociopathic, nonsensical or just plain mean treatment by their superiors. It doesn't just happen at Big Law. It didn't stop happening a generation ago. Maybe it has even happened to you.

The moral is this: Lawyers, be nice to your staff. Paralegals, be nice to your lawyers. We've all got stressful jobs in a field that suffers from enough bad press as it is. Even if no legislature ever recognizes a "no asshole" rule, even if no court ever says that you have the right to be free from assholery, people are already demanding it. You will not get or retain top talent by being a jerk in a world that is becoming less tolerant of jerks every day. And even if you feel no particular moral compulsion to treat the people around you as you'd like to be treated, do it for the sake of your bottom line. Companies at the top—even law firms—will need to recognize

such a right, spoken or unspoken, if they want to survive.



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- 1 Alain de Botton, *The Pleasures and Sorrows of Work* (Vintage Int'l, 2010) (quoted in Steve Denning, *If Happiness Is An Inalienable Right, How Come We're Not Happier?* Forbes (available at <http://www.forbes.com/sites/stevedenning/2012/07/04/if-happiness-is-an-inalienable-right-how-come-were-not-happier/>) (accessed November 30, 2012)).
- 2 See *Mapp v. Ohio*, 367 U.S. 643 (1961); *Katz v. United States*, 389 U.S. 347 (1967); and *Terry v. Ohio*, 392 U.S. 1 (1968).
- 3 *Roper v. Simmons*, 543 U.S. 551 (2005).
- 4 http://www.un.org/waterforlifedecade/human_right_to_water.shtml (accessed November 30, 2012).
- 5 See, e.g., the watershed (and promptly superseded) case of *Baehr v. Lewin* 74 Haw.

- 530, 852 P.2d 44 (Haw. Cup. Ct. 1993), *reconsideration and clarification granted in part*, 74 Haw. 645, 852 P.2d 74 (1993).
- 6 Alex Fitzpatrick, *Internet Access is a Human Right, Says United Nations*, <http://mashable.com/2012/07/06/internet-human-right/> (accessed November 30, 2012).
- 7 See, e.g., *Lochner v. New York*, 198 U.S. 45 (1905).
- 8 42 U.S.C. § 2000e-2.
- 9 42 U.S.C. § 12101 *et seq.*
- 10 See note i, *supra*.
- 11 Ky. Const. § 1.
- 12 David Sterman, *The Death of Pensions: 5 Emerging Trends That Will Affect Us All* <http://www.investinganswers.com/investment-ideas/stock-market/death-pensions-5-emerging-trends-will-affect-us-all-2153> (accessed November 30, 2012).
- 13 *How Millennials are Transforming the Workplace*, The Week, <http://theweek.com/article/index/232375/how-millennials-are-transforming-the-workplace> (accessed November 30, 2012).
- 14 Paul B. Brown, *That's Why They Call It Work*, New York Times, September 30, 2006 (available at <http://www.nytimes.com/2006/09/30/business/30offline.html>).

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